

BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTER OF CHARGES FILED AGAINST)	
POLICE OFFICER HORST HEGEWALD,)	No. 11 PB 2767
STAR No. 18609, DEPARTMENT OF POLICE,)	
CITY OF CHICAGO,)	
)	
AND)	
)	
IN THE MATTER OF CHARGES FILED AGAINST)	
POLICE OFFICER PAUL ROQUE,)	No. 11 PB 2769
STAR No. 12812, DEPARTMENT OF POLICE,)	
CITY OF CHICAGO,)	
)	
)	(CR No. 1020122)
RESPONDENTS.)	

FINDINGS AND DECISIONS

On September 26, 2011, the Superintendent of Police filed with the Police Board of the City of Chicago charges against Police Officer Horst Hegewald, Star No. 18609, and Police Officer Paul Roque, Star No. 12812, (hereinafter sometimes referred to as “Respondents”), recommending that the Respondents be discharged from the Chicago Police Department for violating the following Rules of Conduct:

- Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.
- Rule 6: Disobedience of an order or directive, whether written or oral.
- Rule 14: Making a false report, written or oral.

On October 19, 2011, the Superintendent moved to consolidate these cases for hearing. Thomas E. Johnson, Hearing Officer of the Police Board, granted the motion to consolidate without objection from either of the Respondents.

The Police Board caused a hearing on these charges against the Respondents to be had before Hearing Officer Johnson on April 30 and May 1, 2012.

Following the hearing, the members of the Police Board read and reviewed the record of proceedings and viewed the video-recording of the testimony of the witnesses. Hearing Officer Johnson made an oral report to and conferred with the Police Board before it rendered its findings and decisions.

POLICE BOARD FINDINGS

The Police Board of the City of Chicago, as a result of its hearing on the charges, finds and determines that:

1. Each Respondent was at all times mentioned herein employed as a police officer by the Department of Police of the City of Chicago.

2. The written charges, and a Notice stating when and where a hearing on the charges was to be held, were served upon each Respondent more than five (5) days prior to the hearing on the charges.

3. Throughout the hearing on the charges each Respondent appeared in person and was represented by legal counsel.

4. The Respondents' Motion to Strike and Dismiss is **denied** for the reasons set forth below. The Respondents seek to have the charges filed against them stricken and the case dismissed because of the three-year delay in bringing the charges. The incident at issue came to light on September 19, 2008, when Mark Geinosky made his initial complaint to the Police Department's Internal Affairs Division (IAD). Charges were not filed until September 26, 2011. The Respondents argue that: (a) the failure to bring timely charges violates the due process rights of the Respondents; (b) the charges should be barred by laches; and (c) the Police Department failed to follow its own General Orders and violated due process.

a. Due Process. Citing *Morgan v. Department of Financial and Professional Regulation*,

374 Ill.App.3d 275, 871 NE2d 178 (1st Dist 2007), and *Lyon v. Department of Children and Family Services*, 209 Ill.2d 264, 807 NE2d 423 (2004), the Respondents claim that the Constitution precludes such a lengthy delay in the investigation of the Respondents' alleged misconduct. *Morgan* and *Lyon*, however, involved delay in *adjudication* of allegations of misconduct after the respective plaintiffs had been suspended from their jobs—not delay in the *investigation* leading to the initial suspensions. *Morgan* involved a clinical psychologist accused of sexually abusing a patient, where the state took fifteen months to decide the case after the suspension. *Lyon* involved a teacher accused of abusing students where the director of DCFS failed to honor specific regulatory time limits for decision-making.

The Respondents' case before the Police Board is different, as the Respondents are complaining about the delay from the time of the incident to the bringing of charges, not the time it took to try them once the charges were filed and they were suspended without pay. The difference is important because the due-process analysis in *Morgan* and *Lyon* is triggered by the state's decision to deprive the psychologist and teacher of their jobs, thus preventing them from working for prolonged periods of time before they were accorded the opportunity to have a hearing and decision to clear their name. Here, the Respondents were working and were being paid their full salary and benefits during the entire period of the investigation and up to the filing of charges with the Police Board. The Due Process clause precludes a state or local government from "depriving any person of life, liberty or property [i.e. a public job] without due process of law." Here, the Respondents were not suspended without pay from their jobs until October 5, 2011, shortly after the charges against them were filed, and therefore the Respondents were *not* deprived of their jobs prior to the filing of charges, and any delay in bringing the charges is therefore *not* a violation of the Respondents' due process rights.

We recognize that the Circuit Court of Cook County, in *Orsa v. City of Chicago Police Board*, 11 CH 08166 (March 1, 2012), found that the protections of the Due Process clause are triggered by an unreasonable delay in the investigation of a matter, even if the officer retains his job, salary and benefits during the investigation. The Court cited *Stull v The Department of Children and Family Services*, 239 Ill.App.3d 325 (5th Dist. 1992). *Stull* involved a teacher accused of sexually abusing two of his students. The statute and regulations governing DCFS investigations of child abuse provided strict time limits on the length of any investigation and on the time within which a hearing must be conducted and a decision entered if the adult found to have abused children sought a hearing. The *Stull* court found that DCFS had grossly violated these time limits and required expungement of the adverse finding against the teacher, even though the administrative appeal found that he had been properly “indicated” as an abuser. The *Stull* court did find that the teacher’s due process rights had been infringed, but it was not because of a delay in DCFS’s investigation of the case. The court held that due process was violated by the more than one-year delay in adjudicating the teacher’s appeal because during that period of time there was an indicated finding of child abuse lodged against the teacher and this finding prohibited him from working, *see* 239 Ill.App.3d at 335, thus triggering the kind of deprivation that is not present here in Respondents’ case. *Cavaretta v. Department of Children and Family Services*, 277 Ill.App.3d 16 (2nd Dist. 1996), also cited by the Circuit Court, is identical to *Stull*, which it relies upon. The *Cavaretta* court was quite careful to find that due process was not implicated until DCFS (after its investigation was complete) “indicated” the teacher as a child abuser and placed the teacher’s name in the state’s central registry, which directly deprived the teacher of the inability to work.¹

¹ The Circuit Court also cited *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985), but only in general

b. Laches. Laches is an equitable doctrine that is used to prevent a party in litigation from enforcing a right it otherwise has because it has not been diligent in asserting this right and the opposing party has been prejudiced by the delay. The Respondents cite *People v. McClure*, 218 Ill.2d 375, 843 NE2d 308 (2006), where the Illinois Supreme Court declined to apply laches against a DUI defendant who waited a year to challenge the statutory summary suspension of his driving privileges. The court found no evidence of prejudice stemming from the delay in filing his petition.

Here, the Respondents argue that the delay in bringing the charges resulted in prejudice to them in that critical documents and witnesses were unavailable. To be sure, there were documents the Board would like to have seen presented in this case, *e.g.*, the original ticket books, the original tickets in dispute, the Department's orders invalidating pre-printed ticket books, and all of the citation control sheets for these officers. It is unclear whether the delay in the investigation of the case made these records unavailable. These records, however, were not available to either the Superintendent or the Respondents. Their absence prejudiced the Superintendent more than the Respondents, as it directly undermined the credibility and completeness of the Superintendent's proof. Therefore, the absence of these records is not a basis for invoking laches on behalf of the Respondents. The Respondents' claim that witnesses were unavailable is not accurate. Respondents say they wanted to call former Officer William Whelehan, but he was present throughout the hearing and they did not call him. They also wanted to call former Officer Kenneth Wilkerson (who resigned from the Police Department) and Officer Steven Sabatino (who is on military duty in Afghanistan). The Respondents,

terms. There was no issue in *Loudermill* that a deprivation, for due process purposes, had occurred as it involved the discharge of school district employees.

however, made no effort to subpoena former Officer Wilkerson and made no showing that Officer Sabatino had any probative evidence to offer.

Private parties and public agencies are not on an equal footing when it comes to application of the laches doctrine. Many cases, including *Van Milligan v. Board of Fire and Police Commissioners of the Village of Glenview*, 158 Ill.2d 85, 630 NE2d 830 (1994), hold that laches can only be invoked against a municipality under “compelling” or “extraordinary” circumstances. In addition, the party that invokes the doctrine of laches has the burden of pleading and proving the delay and the prejudice. *Hannigan v. Hoffmeister*, 240 Ill. App. 3d 1065, 1074 (1st Dist. 1992). See also *Nature Conservancy v. Wilder*, 656 F.3d. 646 (7th Cir. 2011). The Respondents here have not demonstrated any such “compelling” or “extraordinary” circumstances warranting a dismissal of their cases, and have not carried the burden of proving unreasonable delay and consequent prejudice.

c. General Order 93-03. The Respondents argue that the Police Department’s own General Order requires a prompt and thorough investigation, and that the Department failed to fully comply with the provisions of this General Order. In fact, the General Order does not set an absolute deadline within which investigations must be completed, but provides that if they last more than 30 days, the investigator must seek and obtain an extension of time within which to complete the investigation. There is no evidence in the record that the investigator here did not seek and was not granted extensions of time, so there is no evidence that the Department failed to comply with the General Order. Moreover, even if the General Order was violated, there is no provision in the General Order requiring the extraordinary remedy of dismissal of the cases as a sanction for such a violation.

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5. The Respondent, **Police Officer Horst Hegewald**, Star No. 18609, charged herein, is **not guilty** of violating, to wit:

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department,

in that the Superintendent did not prove by a preponderance of the evidence the following charge:

Count I: On or about October 19, 2007, Officer Hegewald falsely issued citation number 0051754738 to a vehicle with license plate number 8089732 for being within 15 feet of a fire hydrant at or near 4600 South Winchester Avenue on or near October 19, 2007, at 11:00 p.m., when in fact the vehicle was not within 15 feet of a fire hydrant on or near October 19, 2007, at 11:00 p.m., thereby engaging in conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.

There is no question that someone harassed Mark Geinosky by issuing multiple, unwarranted parking tickets. The issue in these cases is whether the Superintendent has proved by a preponderance of evidence that Horst Hegewald and Paul Roque participated in this scheme.

The Board finds that the evidence is not sufficient to implicate Officer Hegewald. The Superintendent contends that four of the tickets issued to Mr. Geinosky contained Officer Hegewald's signature, were issued on a day and time he was on duty, and were from a ticket book issued to him. The Superintendent further notes that Officer Hegewald never reported his ticket book lost or stolen.

Officer Hegewald concedes that his signature is on these tickets, as he credibly testified that he pre-signed his tickets. The evidence, however, shows that at the time the tickets were issued (11:00 p.m. on October 19, 2007), Officer Hegewald was in the 9th District police station (from 9:30 p.m. until 12:17 a.m.) processing an arrest. In addition, the issuance of parking tickets is documented on Citation Control Sheets. When an officer issues a parking ticket, one copy is

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left with the illegally parked vehicle, one is retained in the officer's ticket book, and the original is given to a citation control clerk in the police station, who records on the Citation Control Sheet the number of the ticket, when it was issued, and when the ticket was sent to the Department of Revenue. The Board finds the Citation Control Sheet containing the improper tickets to be very suspect. Officer Hegewald regularly wrote many parking tickets. This is confirmed by Lieutenant John Riordan and Officer Nicole Carrethers, the assistant secretary of his Targeted Response Unit, who testified Officer Hegewald had two traffic key dates on account of the volume of tickets he wrote. Yet, the Citation Control Sheet containing the improper tickets shows that it is for a ticket book issued February 27, 2007. It reflects the issuance of twelve tickets in May of 2007, then the four false tickets on October 19, 2007, and finally three tickets issued on January 11, 2008. Ordinarily, an officer will issue tickets sequentially from the same book, and then move on to another book. Officer Carrothers testified that Officer Hegewald ordinarily would have issued 150-200 tickets between May and October. Thus, the pattern reflected on the Citation Control Sheet does not correspond to the manner in which Officer Hegewald issued tickets. Indeed, other Citation Control Sheets in evidence (Respondents' Exhibit No. 7) show that Officer Hegewald used later-issued ticket books to write tickets between May and October. Moreover, the Citation Control Sheet containing the improper tickets also includes three tickets supposedly issued on January 11, 2008, tickets that were issued the same date and for the same location as the false tickets allegedly issued by Office Roque, when the evidence is clear that Officer Hegewald was not on duty on January 11, 2008. This evidence supports the contention that another person possessed and was writing false tickets from the book originally assigned to Officer Hegewald.

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There was un rebutted evidence from the Respondents, Lt. Riordan, Officer Carrethers, as well as the Superintendent's witness Officer Alvin Crawford, that on a regular basis the Police Department issues orders that inform officers their pre-printed parking ticket books have become obsolete, *e.g.*, because the amount of a fine has changed. When such an order is issued the officer is to deposit the invalid ticket book into a box maintained in the district. Eventually, these invalid ticket books are sent back to the Department of Revenue with transmittal slips, according to Officer Carrethers. Before they are returned, the invalid ticket books in the box sit out in the open and are therefore accessible to officers and others on the Police Department staff. Respondents have suggested that outdated parking ticket books were removed from these boxes and used without their knowledge. The Citation Control Sheet for the improper tickets, showing tickets issued while Officer Hegewald was on an arrest and while Officer Hegewald was off duty, is consistent with this notion.

The Superintendent did not offer any of the orders invalidating parking ticket books or any transmittal documents showing when such ticket books were returned to the Department of Revenue. These documents would have been relevant to Respondents' suggestion that outdated parking ticket books were removed from the boxes and used without their knowledge because the documents might have shown when the parking ticket books became outdated and were put in the boxes. The absence of these documents makes it more difficult for the Board to accept the Superintendent's position and reject the Respondents' theory.

The Superintendent was also unable to introduce any evidence to suggest that Officer Hegewald knew or had any dealings with Mr. Geinosky or his ex-wife, directly or indirectly. (Officer Hegewald did not live near Mr. Geinosky and his ex-wife, as did former Officer Wilkerson; Officer Hegewald did not query Mr. Geinosky's license plate, as did Officers Aguilar

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and Poblador.) In the absence of such evidence, and in light of the matters discussed above, the Board is left with considerable doubt that Officer Hegewald wrote the false parking tickets at issue.

6. The Respondent, **Police Officer Horst Hegewald**, Star No. 18609, charged herein, is **not guilty** of violating, to wit:

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department,

in that the Superintendent did not prove by a preponderance of the evidence the following charge:

Count II: On or about October 19, 2007, Officer Hegewald falsely issued citation number 0051754739 to a vehicle with license plate number 8089732 for parking/standing on a crosswalk at or near 4600 South Winchester Avenue on or near October 19, 2007, at 11:00 p.m., when in fact the vehicle was not parking/standing on a crosswalk on or near October 19, 2007, at 11:00 p.m., thereby engaging in conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.

See the findings set forth in paragraph no. 5 above, which are incorporated here by reference.

7. The Respondent, **Police Officer Horst Hegewald**, Star No. 18609, charged herein, is **not guilty** of violating, to wit:

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department,

in that the Superintendent did not prove by a preponderance of the evidence the following charge:

Count III: On or about October 19, 2007, Officer Hegewald falsely issued citation number 0051754740 to a vehicle with license plate number 8089732 for obstructing the roadway at or near 4600 South Winchester Avenue on or near October 19, 2007, at 11:00 p.m., when in

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fact the vehicle was not obstructing the roadway on or near October 19, 2007, at 11:00 p.m., thereby engaging in conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.

See the findings set forth in paragraph no. 5 above, which are incorporated here by reference.

8. The Respondent, **Police Officer Horst Hegewald**, Star No. 18609, charged herein, is **not guilty** of violating, to wit:

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department,

in that the Superintendent did not prove by a preponderance of the evidence the following charge:

Count IV: On or about October 19, 2007, Officer Hegewald falsely issued citation number 0051754741 to a vehicle with license plate number 8089732 for parking/standing at a bus, taxi, carriage stand at or near 1658 West 47th Street on or near October 19, 2007, at 11:20 p.m., when in fact the vehicle was not parking/standing at a bus, taxi, carriage stand on or near October 19, 2007, at 11:20 p.m., thereby engaging in conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.

See the findings set forth in paragraph no. 5 above, which are incorporated here by reference.

9. The Respondent, **Police Officer Horst Hegewald**, Star No. 18609, charged herein, is **not guilty** of violating, to wit:

Rule 6: Disobedience of an order or directive, whether written or oral,

in that the Superintendent did not prove by a preponderance of the evidence the following charge:

Count I: On or about October 19, 2007, Officer Hegewald issued citation number

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0051754738 to a vehicle with license plate number 8089732 for being within 15 feet of a fire hydrant on or near October 19, 2007, at 11:00 p.m. and failed to attach the citation to the vehicle, in violation of General Order 90-06, Section III-A and/or Special Order 04-17-04, Section III-B.

See the findings set forth in paragraph no. 5 above, which are incorporated here by reference.

10. The Respondent, **Police Officer Horst Hegewald**, Star No. 18609, charged herein, is **not guilty** of violating, to wit:

Rule 6: Disobedience of an order or directive, whether written or oral,
in that the Superintendent did not prove by a preponderance of the evidence the following charge:

Count II: On or about October 19, 2007, Officer Hegewald issued citation number 0051754739 to a vehicle with license plate number 8089732 for parking/standing on a crosswalk on or near October 19, 2007, at 11:00 p.m. and failed to attach the citation to the vehicle, in violation of General Order 90-06, Section III-A and/or Special Order 04-17-04, Section III-B.

See the findings set forth in paragraph no. 5 above, which are incorporated here by reference.

11. The Respondent, **Police Officer Horst Hegewald**, Star No. 18609, charged herein, is **not guilty** of violating, to wit:

Rule 6: Disobedience of an order or directive, whether written or oral,
in that the Superintendent did not prove by a preponderance of the evidence the following charge:

Count III: On or about October 19, 2007, Officer Hegewald issued citation number 0051754740 to a vehicle with license plate number 8089732 for obstructing the roadway on

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or near October 19, 2007, at 11:00 p.m. and failed to attach the citation to the vehicle, in violation of General Order 90-06, Section III-A and/or Special Order 04-17-04, Section III-B.

See the findings set forth in paragraph no. 5 above, which are incorporated here by reference.

12. The Respondent, **Police Officer Horst Hegewald**, Star No. 18609, charged herein, is **not guilty** of violating, to wit:

Rule 6: Disobedience of an order or directive, whether written or oral,
in that the Superintendent did not prove by a preponderance of the evidence the following charge:

Count IV: On or about October 19, 2007, Officer Hegewald issued citation number 0051754741 to a vehicle with license plate number 8089732 for parking/standing at a bus, taxi, carriage stand on or near October 19, 2007, at 11:20 p.m. and failed to attach the citation to the vehicle, in violation of General Order 90-06, Section III-A and/or Special Order 04-17-04, Section III-B.

See the findings set forth in paragraph no. 5 above, which are incorporated here by reference.

13. The Respondent, **Police Officer Horst Hegewald**, Star No. 18609, charged herein, is **not guilty** of violating, to wit:

Rule 14: Making a false report, written or oral,
in that the Superintendent did not prove by a preponderance of the evidence the following charge:

Count I: On or about October 19, 2007, Officer Hegewald falsely issued citation number 0051754738 to a vehicle with license plate number 8089732 for being within 15 feet of a fire hydrant at or near 4600 South Winchester Avenue on or near October 19, 2007, at 11:00

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p.m., when in fact the vehicle was not within 15 feet of a fire hydrant on or near October 19, 2007, at 11:00 p.m., thereby making a false report, written or oral.

See the findings set forth in paragraph no. 5 above, which are incorporated here by reference.

14. The Respondent, **Police Officer Horst Hegewald**, Star No. 18609, charged herein, is **not guilty** of violating, to wit:

Rule 14: Making a false report, written or oral,
in that the Superintendent did not prove by a preponderance of the evidence the following charge:

Count II: On or about October 19, 2007, Officer Hegewald falsely issued citation number 0051754739 to a vehicle with license plate number 8089732 for parking/standing on a crosswalk at or near 4600 South Winchester Avenue on or near October 19, 2007, at 11:00 p.m., when in fact the vehicle was not parking/standing on a crosswalk on or near October 19, 2007, at 11:00 p.m., thereby making a false report, written or oral.

See the findings set forth in paragraph no. 5 above, which are incorporated here by reference.

15. The Respondent, **Police Officer Horst Hegewald**, Star No. 18609, charged herein, is **not guilty** of violating, to wit:

Rule 14: Making a false report, written or oral,
in that the Superintendent did not prove by a preponderance of the evidence the following charge:

Count III: On or about October 19, 2007, Officer Hegewald falsely issued citation number 0051754740 to a vehicle with license plate number 8089732 for obstructing the roadway at or near 4600 South Winchester Avenue on or near October 19, 2007, at 11:00 p.m., when in fact the vehicle was not obstructing the roadway on or near October 19, 2007, at 11:00 p.m.,

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thereby making a false report, written or oral.

See the findings set forth in paragraph no. 5 above, which are incorporated here by reference.

16. The Respondent, **Police Officer Horst Hegewald**, Star No. 18609, charged herein, is **not guilty** of violating, to wit:

Rule 14: Making a false report, written or oral,
in that the Superintendent did not prove by a preponderance of the evidence the following charge:

Count IV: On or about October 19, 2007, Officer Hegewald falsely issued citation number 0051754741 to a vehicle with license plate number 8089732 for parking/standing at a bus, taxi, carriage stand at or near 1658 West 47th Street on or near October 19, 2007, at 11:20 p.m., when in fact the vehicle was not parking/standing at a bus, taxi, carriage stand on or near October 19, 2007, at 11:20 p.m., thereby making a false report, written or oral.

See the findings set forth in paragraph no. 5 above, which are incorporated here by reference.

17. The Respondent, **Police Officer Paul Roque**, Star No. 12812, charged herein, is **not guilty** of violating, to wit:

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department,
in that the Superintendent did not prove by a preponderance of the evidence the following charge:

Count I: On or about January 11, 2008, Officer Roque falsely issued citation number 0053474953 to a vehicle with license plate number 8089732 for being within 15 feet of a fire hydrant at or near 4379 West 26th Street on or near January 11, 2008, at 9:00 p.m., when in fact the vehicle was not within 15 feet of a fire hydrant on or near January 11, 2008, at 9:00

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p.m., thereby engaging in conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.

The Board also has considerable doubt that Officer Roque participated in the unlawful scheme targeting Mr. Geinosky, and finds that the Superintendent did not discharge his burden by a preponderance of the evidence with respect to Officer Roque. While Officer Roque was on duty on January 11, 2008, when the three parking tickets purportedly bearing his signature were written, there is substantial evidence to indicate he did not write these tickets.

First, Officer Roque testified that his signature does not appear on any of the three improperly issued tickets. His testimony is supported by Ellen Mulcrone Schuetzner, an expert forensic document examiner, whose testimony was not rebutted by the City.

Second, Officer Roque's Daily Assignment and Activity Report, a contemporaneous report signed by Roque and his two partners, neither of whom is implicated in this case, for January 11, 2008, the day the false tickets were written, shows that neither Officer Roque, nor his partners, wrote any parking tickets that day. This was confirmed by Lieutenant John Ryan.

Third, the officers in the Targeted Response Unit were assigned the same car on a regular basis. Sergeant Bill Wolf testified that officers were encouraged to keep their belongings and equipment in the trunk of their regular car. While some officers, like Officer Crawford, took their parking ticket books home, the evidence shows that most officers did not. Officer Roque testified that he left his ticket book in his regularly assigned car, which was Vehicle No. 7919. On January 11, 2008, however, the Attendance and Assignment sheets show that Officer Roque was working in the Targeted Response Unit with two partners. He testified that when three officers work together, they cannot use a cage car like the one regularly assigned to Officer Roque (because the passenger in the rear seat of such a car cannot exit the vehicle on his own) and, in

fact, Department records show that on the night of January 11, 2008, Officer Roque was not in his regular car but in Vehicle No. 9841 (Superintendent's Exhibit No. 18). As such, Officer Roque credibly testified that he likely did not have his parking ticket book with him that night.

Fourth, like Officer Hegewald, the Superintendent had no evidence that Officer Roque knew or had any dealings with Mr. Geinosky or his ex-wife, as was the case with some of the other Targeted Response Unit personnel.

Finally, as noted above, the Superintendent's failure to offer any of the orders invalidating parking ticket books or any transmittal documents showing when such ticket books were returned to the Department of Revenue makes it more difficult to reject Respondents' suggestion that outdated parking ticket books were removed from the boxes and used without their knowledge.

In sum, while there is no dispute that someone harassed Mark Geinosky by issuing many false parking tickets to his vehicle, there is insufficient evidence to support a finding that Officers Hegewald and Roque were culprits in the scheme targeting Mr. Geinosky.

18. The Respondent, **Police Officer Paul Roque**, Star No. 12812, charged herein, is **not guilty** of violating, to wit:

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department,

in that the Superintendent did not prove by a preponderance of the evidence the following charge:

Count II: On or about January 11, 2008, Officer Roque falsely issued citation number 0053474954 to a vehicle with license plate number 8089732 for obstructing the roadway at or near 4379 West 26th Street on or near January 11, 2008, at 9:00 p.m., when in fact the vehicle was not obstructing the roadway on or near January 11, 2008, at 9:00 p.m., thereby

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engaging in conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.

See the findings set forth in paragraph no. 17 above, which are incorporated here by reference.

19. The Respondent, **Police Officer Paul Roque**, Star No. 12812, charged herein, is **not guilty** of violating, to wit:

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department,

in that the Superintendent did not prove by a preponderance of the evidence the following charge:

Count III: On or about January 11, 2008, Officer Roque falsely issued citation number 0053474955 to a vehicle with license plate number 8089732 for parking/standing in a crosswalk at or near 4379 West 26th Street on or near January 11, 2008, at 9:00 p.m., when in fact the vehicle was not parking/standing in a crosswalk on or near January 11, 2008, at 9:00 p.m., thereby engaging in conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.

See the findings set forth in paragraph no. 17 above, which are incorporated here by reference.

20. The Respondent, **Police Officer Paul Roque**, Star No. 12812, charged herein, is **not guilty** of violating, to wit:

Rule 6: Disobedience of an order or directive, whether written or oral,

in that the Superintendent did not prove by a preponderance of the evidence the following charge:

Count I: On or about January 11, 2008, Officer Roque issued citation number 0053474953 to a vehicle with license plate number 8089732 for being within 15 feet of a fire hydrant on or

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near January 11, 2008, at 9:00 p.m. and failed to attach the citation to the vehicle, in violation of General Order 90-06, Section III-A and/or Special Order 04-17-04, Section III-B.

See the findings set forth in paragraph no. 17 above, which are incorporated here by reference.

21. The Respondent, **Police Officer Paul Roque**, Star No. 12812, charged herein, is **not guilty** of violating, to wit:

Rule 6: Disobedience of an order or directive, whether written or oral,
in that the Superintendent did not prove by a preponderance of the evidence the following charge:

Count II: On or about January 11, 2008, Officer Roque issued citation number 0053474954 to a vehicle with license plate number 8089732 for obstructing the roadway on or near January 11, 2008, at 9:00 p.m. and failed to attach the citation to the vehicle, in violation of General Order 90-06, Section III-A and/or Special Order 04-17-04, Section III-B.

See the findings set forth in paragraph no. 17 above, which are incorporated here by reference.

22. The Respondent, **Police Officer Paul Roque**, Star No. 12812, charged herein, is **not guilty** of violating, to wit:

Rule 6: Disobedience of an order or directive, whether written or oral,
in that the Superintendent did not prove by a preponderance of the evidence the following charge:

Count III: On or about January 11, 2008, Officer Roque issued citation number 0053474955 to a vehicle with license plate number 8089732 for parking/standing in a crosswalk on or near January 11, 2008, at 9:00 p.m. and failed to attach the citation to the vehicle, in violation of General Order 90-06, Section III-A and/or Special Order 04-17-04, Section III-B.

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See the findings set forth in paragraph no. 17 above, which are incorporated here by reference.

23. The Respondent, **Police Officer Paul Roque**, Star No. 12812, charged herein, is **not guilty** of violating, to wit:

Rule 14: Making a false report, written or oral,
in that the Superintendent did not prove by a preponderance of the evidence the following charge:

Count I: On or about January 11, 2008, Officer Roque falsely issued citation number 0053474953 to a vehicle with license plate number 8089732 for being within 15 feet of a fire hydrant at or near 4379 West 26th Street on or near January 11, 2008, at 9:00 p.m., when in fact the vehicle was not within 15 feet of a fire hydrant on or near January 11, 2008, at 9:00 p.m., thereby making a false report, written or oral.

See the findings set forth in paragraph no. 17 above, which are incorporated here by reference.

24. The Respondent, **Police Officer Paul Roque**, Star No. 12812, charged herein, is **not guilty** of violating, to wit:

Rule 14: Making a false report, written or oral,
in that the Superintendent did not prove by a preponderance of the evidence the following charge:

Count II: On or about January 11, 2008, Officer Roque falsely issued citation number 0053474954 to a vehicle with license plate number 8089732 for obstructing the roadway at or near 4379 West 26th Street on or near January 11, 2008, at 9:00 p.m., when in fact the vehicle was not obstructing the roadway on or near January 11, 2008, at 9:00 p.m., thereby making a false report, written or oral.

See the findings set forth in paragraph no. 17 above, which are incorporated here by

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Police Officers Horst Hegewald & Paul Roque
Findings and Decisions

reference.

25. The Respondent, **Police Officer Paul Roque**, Star No. 12812, charged herein, is **not guilty** of violating, to wit:

Rule 14: Making a false report, written or oral,

in that the Superintendent did not prove by a preponderance of the evidence the following charge:

Count III: On or about January 11, 2008, Officer Roque falsely issued citation number 0053474955 to a vehicle with license plate number 8089732 for parking/standing in a crosswalk at or near 4379 West 26th Street on or near January 11, 2008, at 9:00 p.m., when in fact the vehicle was not parking/standing in a crosswalk on or near January 11, 2008, at 9:00 p.m., thereby making a false report, written or oral.

See the findings set forth in paragraph no. 17 above, which are incorporated here by reference.

BY REASON OF THE FINDINGS set forth herein, cause exists for restoring Respondent Police Officer Horst Hegewald, Star No. 18609, to his position as a police officer with the Department of Police, and to the services of the City of Chicago, with all rights and benefits, effective October 5, 2011, and cause exists for restoring Respondent Police Officer Paul Roque, Star No. 12812, to his position as a police officer with the Department of Police, and to the services of the City of Chicago, with all rights and benefits, effective October 5, 2011.

POLICE BOARD DECISION

The Police Board of the City of Chicago, having read and reviewed the record of proceedings in this case, having viewed the video-recording of the testimony of the witnesses, having received the oral report of the Hearing Officer, Thomas E. Johnson, and having conferred with the Hearing Officer on the credibility of the witnesses and the evidence, hereby adopts all findings herein; and

IT IS HEREBY ORDERED that the Respondent, **Police Officer Horst Hegewald**, Star No. 18609, as a result of having been found **not guilty** of the charges in Police Board Case No. 11 PB 2767, be and hereby is **restored** to his position as a police officer with the Department of Police, and to the services of the City of Chicago, with all rights and benefits, effective October 5, 2011.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 31st DAY OF MAY, 2012.

/s/ Demetrius E. Carney

/s/ Scott J. Davis

/s/ William F. Conlon

/s/ Rita A. Fry

/s/ Susan L. McKeever

/s/ Johnny L. Miller

/s/ Elisa Rodriguez

Attested by:

/s/ Max A. Caproni
Executive Director
Police Board

DISSENT

The following members of the Police Board hereby dissent from the Decision of the majority of the Board with regard to **Police Officer Horst Hegewald**.

[None]

POLICE BOARD DECISION

The Police Board of the City of Chicago, having read and reviewed the record of proceedings in this case, having viewed the video-recording of the testimony of the witnesses, having received the oral report of the Hearing Officer, Thomas E. Johnson, and having conferred with the Hearing Officer on the credibility of the witnesses and the evidence, hereby adopts all findings herein; and

IT IS HEREBY ORDERED that the Respondent, **Police Officer Paul Roque**, Star No. 12812, as a result of having been found **not guilty** of the charges in Police Board Case No. 11 PB 2769, be and hereby is **restored** to his position as a police officer with the Department of Police, and to the services of the City of Chicago, with all rights and benefits, effective October 5, 2011.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 31st DAY OF MAY, 2012.

/s/ Demetrius E. Carney

/s/ Scott J. Davis

/s/ William F. Conlon

/s/ Rita A. Fry

/s/ Susan L. McKeever

/s/ Johnny L. Miller

/s/ Elisa Rodriguez

Attested by:

/s/ Max A. Caproni
Executive Director
Police Board

DISSENT

The following members of the Police Board hereby dissent from the Decision of the majority of the Board with regard to **Police Officer Paul Roque**.

[None]

RECEIVED A COPY OF
THE FOREGOING COMMUNICATION
THIS ____ DAY OF _____, 2012.

SUPERINTENDENT OF POLICE

BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTER OF CHARGES FILED AGAINST)	
POLICE OFFICER WILLIAM WHELEHAN,)	No. 11 PB 2768
STAR No. 7949, DEPARTMENT OF POLICE,)	
CITY OF CHICAGO,)	
)	(CR No. 1020122)
RESPONDENT.)	

MEMORANDUM AND ORDER

On June 8, 2011, the Superintendent of Police filed with the Police Board of the City of Chicago charges against Police Officer William Whelehan, Star No. 7949, recommending that the he be discharged from the Chicago Police Department for violating several Rules of Conduct (Police Board Case No. 11 PB 2753, hereinafter sometimes referred to as “Whelehan I”).

On September 26, 2011, the Superintendent filed with the Police Board a second set of charges against Whelehan recommending that he be discharged from the Chicago Police Department for violating several Rules of Conduct (Police Board Case No. 11 PB 2768, hereinafter sometimes referred to as “Whelehan II”). The charges in the two cases are not related.

On October 20, 2011, the Police Board decided Whelehan I. The Board found Whelehan guilty of all charges and ordered that he be discharged from his position as a police officer with the Department of Police, and from the services of the City of Chicago. On October 27, 2011, the Board issued its written findings and decision, and the Executive Director (Secretary) of the Board notified the parties of the Board’s action by forwarding the findings and decision to the Superintendent and by sending a copy of the findings and decision to Whelehan.

The question now is whether the Police Board has jurisdiction to hear and decide Whelehan II.

Section 2-84-030 of the Municipal Code of Chicago grants the Police Board the following power:

To serve as a board to hear disciplinary actions for which a suspension for more than the 30 days expressly reserved to the superintendent is recommended, or for removal or discharge involving *officers and employees of the police department* in the classified civil service of the city. (Emphasis added.)

The Superintendent opposes dismissing Whelehan II on jurisdictional grounds, stating that Whelehan's status with the Chicago Police Department is "30 day suspension pending" because Whelehan I is currently pending before the Circuit Court of Cook County (Whelehan filed a timely petition for administrative review of the Board's findings and decision in Whelehan I). The Superintendent asserts that the Board's October 20, 2011, order discharging Whelehan is not a final and appealable order because the Circuit Court could remand Whelehan I to the Board for further action, therefore causing a potential change in the result.

The Board finds the Superintendent's reasoning unpersuasive. The Board's *Rules of Procedure*, established pursuant to Section 2-84-030 of the Municipal Code of Chicago, state that:

The Secretary of the Board shall forward the findings and decision of the Board to the Superintendent for enforcement of the Board's action. If the findings and decision is such that the respondent is guilty of the charges filed and removal, discharge or suspension is ordered, *such order shall become effective forthwith*. (Section III-J; emphasis added.)

In addition, the Municipal Code states:

The findings and decision of the police board, including an explanation of those findings and decision, when approved by said board, shall be certified to the superintendent and *shall forthwith be enforced by said superintendent*. (Section 2-84-030; emphasis added.)

Pursuant to the above provisions, the Board's October 20, 2011, order discharging Whelehan became effective on October 27, 2011. The Board has received no indication that the Circuit

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Police Officer William Whelehan
Memorandum and Order

Court of Cook County has stayed this order. The Board therefore determines that Whelehan is currently not an officer or employee of the Chicago Police Department, and that, pursuant to Section 2-84-030 of the Municipal Code of Chicago, the Board has no power to hear or decide Whelehan II.

The charges filed in Whelehan II shall therefore be dismissed without prejudice. The Superintendent may re-file these charges if a court reverses or vacates the Board's order in Whelehan I or remands Whelehan I for the Board to impose a penalty less than discharge.

POLICE BOARD ORDER

IT IS HEREBY ORDERED that the charges filed against William Whelehan in Police Board Case No. 11 PB 2768 are **dismissed without prejudice**.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 16th DAY OF FEBRUARY, 2012.

/s/ Demetrius E. Carney

/s/ Scott J. Davis

/s/ Melissa M. Ballate

/s/ William F. Conlon

/s/ Ghian Foreman

/s/ Rita A. Fry

/s/ Susan L. McKeever

/s/ Johnny L. Miller

/s/ Elisa Rodriguez

Attested by:

/s/ Max A. Caproni
Executive Director
Police Board

DISSENT

The following members of the Police Board hereby dissent from the Order of the majority of the Board.

[None]

RECEIVED A COPY OF

THE FOREGOING COMMUNICATION

THIS ____ DAY OF _____, 2012.

SUPERINTENDENT OF POLICE